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IN THE

Supreme Court of the United States

April Term, 1970.

No. [redacted] 247

ST. MICHAEL AND ARCHANGEL RUSSIAN ORTHODOX GREEK CATHOLIC CHURCH, a Pennsylvania Corporation, VERY REVEREND ALEXANDER FEDORONKO and PAUL MURIANKA,

Petitioners,

vs.

PETER UHNIAT, JOHN SIDORSKY, JOHN PERAMUS, JR., WILLIAM YURKOW, PAUL KACZMARCZIK, JOHN HARWAN, WILLIAM YUSCHAK, ANDREW SHAST, JOHN PATRICK, BORIS SMARKOLA, EUGENE PAUL, THOMAS MELNICK, HARRY J. BRONSKY, JOHN LAHOVIN, WASYL PYRZ and ANDREW COSS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

Petitioner respectfully prays that a Writ of Certiorari issue to review the Judgment of the Supreme Court of Pennsylvania entered 11 November 1969 in the above entitled cause.

CITATIONS TO OPINIONS BELOW.

A. The Opinion (entitled Adjudication) of the Common Pleas Court of Philadelphia, not yet officially reported, filed December 16, 1966 by Alexander, J., the Chancellor, is, because of its length (encompassing single-spaced pages 3195a through page 3270a of Volume 12 of the Transcript of Record) set forth in Appendix A, separately printed and bound, pages 1 to 84.

B. The Opinion of the Court-en-Banc in favor of Petitioners (Judges Raymond Pace Alexander, Charles L. Guerin, and Francis Shunk Brown, President Judge) filed October 4, 1967 and not yet officially reported because of its length (pages 3486a through 3570a of Volume 13 of the Transcript of Record) is also set forth in Appendix B separately printed and bound, pages 85 to 142.

C. The Decree Nisi by Hon. Raymond Pace Alexander, the Chancellor, entered in the Common Pleas Court, December 16, 1966 (Transcript of Record, page 3270a) is herein set forth in Appendix C, *infra*, page 141.

D. The Final Decree of the Lower Court, in favor of the Petitioners, dated October 4, 1967 and consisting of a one page *prolegomenon* and one page designated as Final Decree (Transcript, pages 3569a and 3570a), signed by the Chancellor in Equity, Raymond Pace Alexander, and by Judge Charles L. Guerin and the Hon. Francis Shunk Brown, President Judge* is set forth in Appendix D, pages 141 to 142.

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* These are well known, highly respected and learned Judges, now reaching or attaining status of "Senior Judges."

E. The Opinion of the Supreme Court of Pennsylvania, written by Mr. Justice Eagen, dated November 11, 1969 (Justice Roberts dissenting, and Justice Musmanno *not* voting, having died before the Opinion) is reported officially in 436 Pa. 222, and is set forth in Appendix E, pages 143 to 159.

F. The action of the Supreme Court of Pennsylvania under its aforesaid Opinion, reversing and remanding the case, is set forth in Appendix F; it is printed on page 160.

G. The Opinion and Final Judgment on Remand, dated February 16, 1970, by Judge Alexander is entitled "Memorandum of the Court of Common Pleas of Philadelphia. Upon Remand from the Supreme Court of Pennsylvania, and Final Judgment," and is copied in Appendix G, pages 161 to 166.

H. An Order afterwards made, entitled "Memorandum and Order" signed by Judge Alexander on 27 February 1970, is set forth in Appendix H, pages 166 to 167.

I. An Oral modification made of that Order expressed immediately thereafter, cannot be printed, since it was oral; it limited the meaning of "property" of St. Michael's Church, amended the time, place and directives of the "Memorandum and Order."

Since several (three), Petitions and Rules were filed after January 12, 1970 but *without* action of the Lower Court, there is printed herewith as Appendix I, only the "Exceptions" filed by Petitioners; those "Exceptions" appear on page 168.

JURISDICTION.

Jurisdiction of this esteemed Court is invoked under Section 1257 (3), of Title 28, United States Code.

The Opinion of the Supreme Court reversing the Lower Court was rendered November 11, 1969. Timely application was filed for re-hearing on the Opinion and Order of Remand; the re-hearing was denied January 12, 1970.

On April 3, 1970, by Order of Justice William J. Brennan, Jr., an Order Extending the time to file this Petition for Writ of Certiorari was granted, extending the time to and including June 11, 1970.

QUESTIONS PRESENTED.

I. Does not the selection of clergy by a parish, made freely and with approval of *all* hierarchies involved, have Constitutional protection beyond attacks by intransigent dissidents who have also claimed they are not subject to *any* hierarchy or Superior Church authority, and beyond Civil Court interference where no improper methods of choice are proven?

II. May Civil Court decisions change religious obligations of a Priest-Rector, and pervert the hierarchical loyalty of parish trustees to an abandonment of ecclesiastically established obligations; and may a Civil Court decree that Church members, and corporate officers elected by them are to disobey convictions of conscience, and obligations under the corporate Charter and Civil By-Laws as understood, ruled and acted on by the hierarchy, without running afoul of Amendments I and XIV of the U. S. Constitution;

and do not Civil Court decisions ignoring ecclesiastical polity and Order violate Amendment I, and Amendment XIV, Section 1, of the U. S. Constitution; and do not actions of a Civil Court replacing a permanent Rector's obligations to Ecclesiastical Superiors by "switching" obligations to another hierarchy violate principles of separation of Church and State?

III. Did not the Pennsylvania Courts violate the Constitution by ordering differently, matters established by hierarchical decrees, particularly as to obligations owed by Metropolia Diocesan Bishops, who acted on the recommendation, release and consent of the Patriarchate of Moscow by its Exarch, the highest ecclesiastical judicatory of the Patriarchate, to which St. Michael's Parish (*including* the respondents) had carried the matter?

IV. Did not the Appeals Court misconstrue and misapply the *Hull* decision, and fail to give due process to parishioners and parish, and contravene the First and Fourteenth Amendments by *limiting* "neutral principles" *and* the consideration of Civil Courts to the single item of the 1915 Charter—particularly when such a delimitation abrogates and evades decisions of the highest ecclesiastical judicatories, and the long established rights of parishioners?

CONSTITUTIONAL PROVISIONS.

Petitioners contend that the Supreme Court of Pennsylvania (and the Common Pleas Court seeking to abide by the decision of the Justices), have violated Amendment I, and Section 1 of Amendment XIV of the U. S. Constitution.

Amendment I provides:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;

Section 1 of Amendment XIV provides:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Petitioners also contend that as applied and interpreted by the Pa. Supreme Court, the Pa. "Lay Control of Church Property Act" (the Act of April 26, 1855, P. L. 328, as amended June 20, 1935, P. L. 353 §1), is unconstitutional; that Act reads as follows:

Church property to be subject to control of officers or authorities thereof; validation of certain charters

Whensoever any property, real or personal, has heretofore been or shall hereafter be bequeathed, devised, or conveyed to any ecclesiastical corporation, bishop, ecclesiastic, or other person, for the use of any church, congregation, or religious society, for or in trust for religious worship or sepulture, or for use by said church, congregation, or religious society, for a school, educational institution, convent, rectory, parsonage, hall, auditorium, or the maintenance of any of these, the same shall be taken and held subject to the control and disposition of such officers or authorities of such church, congregation, or religious society, having a controlling power according to the rules, regulations, usages or corporate requirements of such church, con-

gregation, or religious society, which control and disposition shall be exercised in accordance with and subject to the rules and regulations, usages, canons, discipline and requirements of the religious body, denomination or organization to which such church, congregation, or religious society shall belong, but nothing herein contained shall authorize the diversion of any property from the purposes, uses, and trusts to which it may have been heretofore lawfully dedicated, or to which it may hereafter, consistently herewith, be lawfully dedicated: . . . Provided, That all property, real and personal, held by such existing corporation, shall enure, and be taken and held, subject to the control and disposition as herein provided, with like effect as though such provision had been inserted in the charter of such corporation when originally granted; any other or different provision therein notwithstanding. 1855, April 26, P. L. 328, §7; 1187, June 2, P. L. 298, §1; 1907, May 1, P. L. 132, §1; 1913, May 20, P. L. 242, §1; 1935, June 20, P. L. 353, §1.

STATEMENT OF THE CASE.

In the spring and summer of 1955, the Exarchate of the Patriarchate of Moscow (Russian Orthodox Church) which had appointed clergy to St. Michael and Archangel Russian Orthodox Greek Catholic Parish of Philadelphia (hereafter called St. Michael's), only since 1950, was unable to provide any priest for the parish.

It recommended Very Reverend Alexander Fedoronko of the Russian Orthodox Greek Catholic Church of North America (in brief, known as the Metropolia); the Primate of that Church, His Eminence Metropolitan Leonty there-

upon, as requested by the authorized Parish Council, duly appointed Father Fedoronko as the permanent pastor of St. Michael's.

The appointing document, which also accepted the parish "into the jurisdiction of the Russian Orthodox Greek Catholic Church of North America," was Exhibit PC-64, Transcript page 3601a (Finding of Fact 81, Appendix A, page 56, and Conclusion of Law 13, pages 105-6).

The Minutes and Records of the general meetings of the congregation duly recorded the Patriarchate's Recommendation, and the Resolutions and Motions authorizing the elected Parish Council to seek Fr. Fedoronko's appointment; also the conditions thereof (Exhibit PC-72, Transcript page 3602a) that the parish would be accepted "into the Metropolitanate"—all of which actions of the parish were consented to by the Patriarchate (see Opinion of the Pa. Supreme Court, Appendix E, beginning page 143)—were found as facts by the Trial Court—and the Findings of Fact not disturbed on Appeal.

The Exarchal clergy withdrew from the parish that summer, and St. Michael's resumed its prior long-standing ecclesiastical affiliation with the Metropolia. It prospered and grew from about 250 members in 1955 to 622 voting members in 1962.

The permanent priest-Rector was fully qualified under the 1915 Charter and 1925 By-Laws (Appendix B, Finding 99, page 112). The selection-of-clergy provisions of the Corporate By-Laws are Articles 16 and 19 (Transcript, 3642a):

> Article 16. A rector is chosen by the general parochial meeting, which is convoked for this purpose, and the choice shall be confirmed by the lawful bishop under whose jurisdiction the parish is.
>
> A rector can also be appointed by the bishop with the consent of the parishioners by the majority of the

members present at the meeting especially convoked for this purpose.

Article 19. The rector shall be under the guidance and control of the diocesan bishop, whose jurisdiction is being recognized by the parish, and cannot be moved from his office without an important reason.

The *right* to participate in the selection of the Rector is granted to members of the parish by Article 11 (page 3641a of the Transcript):

Article 11. The full members are the owners of the parochial property and have the right to participate in all parochial meetings as: annual, semi-annual, and special, and can be elected members of the Parish Committee.

The sole provisions for the clergyman's removal are spelled out in Article 20 (3642a). It was not contended below that he was removable thereunder when, in 1963 a group of 16 disgruntled parishioners (Respondents) declared themselves "officers" and unsuccessfully sought his replacement through the Diocesan Bishop.

The Respondents claim to office and to act "for the parish" was based on a rump "parochial" meeting held January 1963; but the Lower Court enjoined them from interfering with the February 3, 1963 annual parish meeting, declared *their* meeting null and void, affirmed the Petitioners (who were hierarchically confirmed) as officers.

Respondents' request to be confirmed as "officers" was declined by the Court, and that decision became final.

This Adjudication (Transcript, 3610a et seq.) followed many days of testimony before the Chancellor throughout 1963. During all of that year, Respondents asserted and claimed that they and St. Michael's were under *no* hierarchy, but were congregational, independent, a "law unto

itself," and "an independent or autonomous" Church (Finding of Fact 96, Appendix B, page 102 infra).

Their claims of "independence" and "beholden to no hierarchy" had been asserted in their Counterclaim and Answer on petitioners' injunctive proceedings.

They amended their Counterclaim in 1964; the several ensuing years of litigation (over 5,000 pages of recorded testimony, and about an equal number of pages of Exhibits) had to do with their Amended Counterclaim which included a request for a Ruling that St. Michael's *was* within the Patriarchal hierarchy.

The hierarchs were not parties, nor litigants.

The hierarchies, indeed, had peacefully, in 1955, acted jointly in the appointment of Fr. Fedoronko, the principal Defendant in the Amended Counterclaim, as the Rector.

The Patriarchate gave its consent (Conclusion of Law 10, Appendix B, page 104), accepted his qualifications under the Charter for Rectorship, and "his candidacy was approved in advance of any appointment" (Finding of Fact 99, Appendix B, pages 112-113).

This action established the appointing Bishop (Metropolia) as the one "in whose constant care and within whose concern the faithful are, and which said Bishop is represented on the local level by the priest of the parish whose representative he is" (Finding of Fact 98, Appendix B, page 112).

Thus, since 1955, St. Michael's was *returned* to the jurisdiction with which it had earlier been affiliated, notably from 1935 under Bishop Adam (page 91, Appendix B, and see pages 95 and 96) who had appointed, under the same By-Laws, Rev. George Cucura (Finding of Fact 54, page 100) who remained within the Metropolia until December, 1949 (page 98, Finding of Fact 45, Appendix B).

Within this period, in 1948, the highest ecclesiastical judicatory, Bishop Macarius of the Patriarchate, declined

to be involved in St. Michael's because of Fr. Cucura's affiliation, and the recognized, continuous jurisdiction of and by the Metropolia Diocesans (page 92, and page 127, Appendix B).

Consistent with the actions of the highest judicatories of *both* hierarchies (Patriarchal and Metropolia) Conclusions of Law 19 and 20 were entered (Appendix B, page 109): that the Rector served within Charter and By-Law purposes; that St. Michael's was within the Metropolia Diocese as approved by the Patriarchate; and that the parish was affiliated with the Metropolia.

The assignment of the Metropolia clergyman "was accomplished after the release of the parish by the Patriarchal Exarchate" (page 125, Appendix B); and, since 1955, the parish "had been accepted into the jurisdiction of the American Metropolia, by action confirmed in a letter of October 31, 1955 to the president of the parish council" (Appendix B, page 125). Further, being a "decision of the highest judicial authority of the Patriarchal Exarchate . . . (it was) a decision which should not be subject to the review of this Court" (page 126, Appendix B).

The Court-en-banc therefore ruled (citing *Watson v. Jones*, 13 Wallace 679, 727) that it was "bound to follow the decision of the Patriarchal Exarchate of 1955, which granted St. Michael's Parish the right in so far as the Patriarchal Exarchate was concerned, of obtaining a permanent priest . . ." and becoming "affiliated jurisdictionally" with the Metropolia (page 126, Appendix B).

Also, the Lower Court held that the parish meeting of May 7, 1967 at which *both* "groups" of parishioner-litigants voted, was consistent with the Patriarchal and Metropolia actions of 1955; and agreed with the selection of clergy by the parish in view of hierarchical decisions, as "no improper methods of choice" were proven (pages 127 and 128).

On purely civil and neutral principles, the Lower Court

found that the 1967 meeting was in accord with the Charter and the By-Laws of the parish corporation (Appendix B, pages 134 and 135).

As for our corporate officers and trustees, their elections were conducted at annual parish meetings allowed by the Non-Profit Corporation Law under provisions of By-Law Articles 26 through 28 (Transcript, 3644a). The Court found Petitioners and their successors duly elected on neutral principles.

The Lower Court thus sustained the freely selected clergyman Fr. Fedoronko, and the equally freely (by By-Law required secret ballots) elected Church Warden and other officers—declining to "confirm" the Respondents into any office, thus holding inviolate the agreements and joint actions of the hierarchies.

Contending that the *Kedroff* and *Kreshik* cases had been misapplied, and Articles I and XIV of the U. S. Constitution violated by the commanding Opinion of the Court-en-banc, the Respondents appealed to the Pa. Supreme Court; the case was argued in November 1968, and an Opinion, adverse to your Petitioners, was filed November 11, 1969. Our timely Petition for re-argument and re-hearing was refused January 12, 1970.

In the meanwhile, the *Hull* case was decided, but of course had not been briefed by either side, nor argued before the Appeals Court.

The Pa. Supreme Court, in effect, held that *no* neutral principles should have been considered (nor *anything* heard or considered by the Lower Court) *except* the one single recorded document, the Charter of 1915 (Appendix E, page 159):

> "We thus conclude that the Lower Court erred in going beyond the 1915 Charter to resolve the instant dispute."

They held to this "limitation" *despite* the evidence and uncontested Findings that both hierarchies had rendered ecclesiastical decisions, and taken extensive actions under the Charter and the By-Laws, and had intimately affected the administrative life of the parish which had fully *accepted* and lived by these ecclesiastical determinations of the hierarchies. To both hierarchies, this parish had always paid respect, had *accepted* them equally; Exhibit PC-1, signed by *all* past Wardens (drawn by their counsel) so affirmed. So too the life and history of St. Michael's.

In consequence of the reversal, and remand to the Lower Court by the Pa. Supreme Court, the Chancellor entered a "Final Judgment"—without any hearings—on February 16, 1970 (see Appendix G, beginning page 161); and added to that an "Order" (Appendix H, beginning page 166).

That is the present stage as to Orders, in the proceedings in the Court of First Instance. In the Appellate Court, no re-hearing of the November 11, 1969 Decision is any longer permitted; at this stage, your Petitioners, having filed an Appeal on March 26, 1970 from the February 16 and 27th judgments of the Chancellor will be permitted to argue merely whether those Orders are proper within the November 11, 1969, Decision—but not the issues raised in this Petition for Certiorari.

Factually: Petitioners are at the point where they have already transferred the Church premises and other properties of St. Michael's to the Respondents; and can expect further adverse Orders of the Chancellor who is conducting hearings requested by Respondents who seek further Orders and Judgments. This course, if permitted, will bring further disturbances to the right of the parish and the congregation to the free exercise of religion, including the proper use of religious articles and property, and the ministrations and care of the freely selected clergy.

PRESENTATION OF THE FEDERAL QUESTION.

The Federal questions in this case were first asserted by the respondents during trial in briefs and oral arguments before the Chancellor and then the Court-en-banc of the Trial Court, particularly with respect to the binding applicability of decisions regarding the hierarchies and principles in *Kedroff v. St. Nicholas Cathedral*, 344 U. S. 94 (1952); *Kreshik v. St. Nicholas Cathedral*, 363 U. S. 190 (1960), and *Watson v. Jones*, 80 U. S. (13 Wall) 679, (1871).

The federal questions citing Amendments I and XIV were also asserted in and by Respondents Briefs before the Pa. Supreme Court to which they had appealed from the adverse, unanimous decision of the Chancellor and the two Judges who had participated with him en-banc.

After Your Honorable Court decided *Presbyterian Church in the U. S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U. S. 440, 89 S. Ct. 601 in 1969, the Respondents filed their Petition before the Supreme Court calling attention to that decision and urging federal questions anew under it, the oral argument in appeal having taken place in Philadelphia on November 12, 1968 before the enunciation of the principles of the *Hull* case.

REASONS FOR GRANTING THE WRIT.

1. The Pa. Supreme Court has denied to litigants within its jurisdiction the rights granted to citizens under our Constitution and the decisions of Your Honorable Court, to "freedom to select clergy, where no improper methods of choice are proven": *Kedroff v. St. Nicholas Cathedral*, 344 U. S. 94, 116 (1952).

2. By the decision to which certiorari is sought, the Pa. Supreme Court has violated the well-established principle of law which precludes civil courts from reviewing or ignoring decisions made by duly constituted ecclesiastical authorities, and has ignored the lines between the responsibilities of church and state for the disposition of use of property. "Even in those cases when the property right follows as an incident from decisions of the church custom or law on ecclesiastical issues, the church rule controls. This under our Constitution necessarily follows in order that there may be free exercise of religion": *Kedroff*, supra, at pages 120-121. See also *Watson v. Jones*, 13 Wallace (U. S. S. C. A.) 679, 727 (1871).

3. Equally as by peccant statute, so may action of the judiciary be violative of first amendment rights as a prohibited exercise of power: *Kreshik v. St. Nicholas Cathedral*, 367 U. S. 190 (1960). In this case, the civil courts below have trenched where the Constitution and Your Honorable Court have declared they may not interfere.

4. As is well known to Your Honorable Court, the limits of action by Lower Courts have variously been determined in the state courts; since the recent case of *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U. S. 440, 89 S. Ct. 601 (1969), further clarification of the principles of law involved is needed, particularly since state courts have failed to grasp the meaning and the application of permitted "neutral principles of law" on which neutral principles a proper review of the instant case could have been had, and the lower court sustained. Moreover, the Court below delimited the neutral principle approach so as to *exclude* important, non-doctrinal factors important to a fair, equitable decision within due process of law.

5. As applied, the "Lay Control of Property Act" of Pennsylvania deprives parishioners and clergy of due process and equal protection of the laws.

6. The questions raised by the decision of the Appeals Court below transcend the complaints and the rankling injustices felt by Petitioners. There are potentials of danger to everyone in allowing unchallenged the interference with ecclesiastical decisions made 15 years ago, and acted upon by Petitioners in good faith and conscience.

7. On the very same day that the within complained of Opinion was entered delimiting court action to one single, solitary item of evidence (the Charter whose provisions were the subject of a different ecclesiastical decision and action) the Pa. Supreme Court also decided *St. John Chrysostom Greek Catholic Church of Pittsburgh, v. Elko,* 436 Pa. 243 (1969) where despite the incorporation of the congregation under the term "autonomic" Church, the Supreme Court did *not* limit itself to the Charter, but reviewed many other facts and history *including the rituals and practices* of that Church, and concluded that it was not autonomous or autonomic, but was united with the hierarchy of the Roman Catholic Church.

8. In view of the recently publicized action (April, 1970), of the Patriarchate *recognizing* the Metropolia hierarchy and its church as the proper continuity of the Orthodox Church in America,* new light has been thrown onto the "jurisdiction" of the Patriarchate and claims made as if there was actual hostility of an ecclesiastical nature between the hierarchy. The grant of this Writ will no doubt preclude much further litigation on Church matters.

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* Not part of the Record, as it followed the Opinion.

CONCLUSION.

Since the federal questions are substantial; the church and hierarchy involved one which has had the attention of this and many other Courts through many years since 1917; and since the proscriptions of the Pa. Supreme Court would leave unprotected the constitutional rights of many faithful Orthodox believers, it is respectfully submitted that this Writ should be granted.

Respectfully submitted,

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